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Emmanuelle Cecile Damay

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KIMBERLY-CLARK WORLDWIDE, INC.
Catherine E. Wolf
401 NORTH LAKE STREET
NEENAH, WI 54956

EXAMINER

HAND, MELANIE JO

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/753,974
Filing Date: January 07, 2004
Appellant(s): DAMAY ET AL.

Ralph H. Dean
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 9, 2008 appealing from the Office action mailed June 18, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,657,538	BECKER et al	04-1987
2004/0253894	FELL et al	12-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Appellant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
2. Claims 1-10 and 14-17 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Becker (U.S. Patent No. 4,657,538).

With respect to **claim 1**: Becker teaches a disposable absorbent liner 10 for use in a crotch portion of underwear comprising: a cover layer in the form of outer cover 18 having a top

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surface and an opposite bottom surface, the cover layer 18 comprising a mixture of hydrophilic microfibers in the form of wood pulp fibers and hydrophobic microfibers in the form of polyester/polyethylene conjugate fibers, wherein a quantity of hydrophilic microfibers and hydrophobic microfibers are located at the top surface. Becker discloses in Example 1 that this outer cover fabric of layer 18 comprises 24% pulp (hydrophilic fibers) and 76% polyester/polyethylene (hydrophobic) fibers, arranged as a pulp/conjugate fiber mixture sandwiched between two veneers of conjugate fibers and the resulting structure is stabilized by melting the polyethylene sheathed conjugate fibers to bond the hydrophobic fibers to the hydrophilic fibers. (Col. 7, lines 39-41, 45-48) Therefore, both hydrophilic and hydrophobic fibers are present at the top surface as a result of melting the top veneer fibers over the pulp fibers. Liner 10 comprises a removable backing layer in the form of release strip 24 and a liquid impermeable baffle layer 20 having a top surface and an opposite bottom surface, with the baffle layer 20 being disposed between the cover layer 18 and the backing layer 24. Becker teaches that the liner of "Example 1" has a maximum thickness of 5.3 mm, which overlaps the range disclosed by appellant serving as the quantitative definition of the term "low profile". (See Specification, Page 2, lines 32-35)

With regard to the limitation "an Absorbent Capacity in the range of about 2 grams to about 10 grams", Becker discloses identical materials for the hydrophilic microfibers (rayon) and hydrophobic fibers (polyethylene) to those disclosed by appellant for the claimed hydrophilic and hydrophobic microfibers. Absorbent capacity is a function of the absorbent materials used and the claimed cover layer recited in claim 1 is solely responsible for the claimed absorbent capacity inasmuch as it is the only element recited in claim 1 that is capable of absorption. If the prior art teaches the identical chemical structure, the properties appellant discloses and/or claims are necessarily present. Therefore, the absorbent liner of Becker has an absorbent

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capacity within the claimed range. Alternatively, it would be obvious to one of ordinary skill in the art to modify the liner of Becker so as to have an absorbent capacity within the claimed range with a reasonable expectation of success, since the materials disclosed by appellant and Becker for the cover layer responsible for absorption are identical. When the structure or composition recited in the reference is substantially identical to that of the claimed invention, claimed properties or functions are presumed to be inherent. See MPEP §2112-2112.01. A prima facie case of either anticipation or obviousness has been established when the reference discloses all of the limitations of a claim except for a property or function and the examiner cannot determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to the appellant. See *In re Fitzgerald*, 205 USPQ 594 (CCPA 1980).

With respect to **claim 2**: Becker teaches a disposable absorbent liner 10 for use in a crotch portion of underwear comprising: a cover layer in the form of outer cover 18 having a top surface and an opposite bottom surface, the cover layer 18 comprising a mixture of hydrophilic microfibers in the form of wood pulp fibers and hydrophobic microfibers in the form of polyester/polyethylene conjugate fibers, wherein a quantity of hydrophilic microfibers and hydrophobic microfibers are located at the top surface. Becker discloses in Example 1 that this outer cover fabric comprises 24% pulp (hydrophilic fibers) and 76% polyester/polyethylene (hydrophobic) fibers, arranged as a pulp/conjugate fiber mixture sandwiched between two veneers of conjugate fibers and the resulting structure is stabilized by melting the polyethylene sheathed conjugate fibers to bond the hydrophobic fibers to the hydrophilic fibers. (Col. 7, lines 39-41, 45-48) Therefore, both hydrophilic and hydrophobic fibers are present at the top surface as a result of melting the top veneer fibers over the pulp fibers. Liner 10 comprises a removable

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backing layer in the form of release strip 24 and a liquid impermeable baffle layer 20 having a top surface and an opposite bottom surface, with the baffle layer 20 being disposed between the cover layer 18 and the backing layer 24. Becker teaches that the liner of "Example 1" has a maximum thickness of 5.3 mm, which overlaps the range disclosed by appellant serving as the quantitative definition of the term "low profile". (See Specification, Page 2, lines 32-35)

With regard to the limitation "an Absorbent Capacity in the range of about 2 grams to about 10 grams", Becker discloses identical materials for the hydrophilic microfibers (rayon) and hydrophobic fibers (polyethylene) to those disclosed by appellant for the claimed hydrophilic and hydrophobic microfibers. Absorbent capacity is a function of the absorbent materials used and the claimed cover layer recited in claim 1 is solely responsible for the claimed absorbent capacity inasmuch as it is the only element recited in claim 1 that is capable of absorption. If the prior art teaches the identical chemical structure, the properties appellant discloses and/or claims are necessarily present. Therefore, the absorbent liner of Becker has an absorbent capacity within the claimed range. Alternatively, it would be obvious to one of ordinary skill in the art to modify the liner of Becker so as to have an absorbent capacity within the claimed range with a reasonable expectation of success, since the materials disclosed by appellant and Becker for the cover layer responsible for absorption are identical. When the structure or composition recited in the reference is substantially identical to that of the claimed invention, claimed properties or functions are presumed to be inherent. See MPEP §2112-2112.01. A prima facie case of either anticipation or obviousness has been established when the reference discloses all of the limitations of a claim except for a property or function and the examiner cannot determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to the appellant. See *In re Fitzgerald*, 205 USPQ 594 (CCPA 1980).

With respect to **claim 3**: Becker teaches a disposable absorbent liner 10 for use in a crotch portion of underwear comprising: a cover layer in the form of outer cover 18 having a top surface and an opposite bottom surface, the cover layer 18 comprising a mixture of hydrophilic microfibers in the form of wood pulp fibers and hydrophobic microfibers in the form of polyester/polyethylene conjugate fibers, wherein a quantity of hydrophilic microfibers and hydrophobic microfibers are located at the top surface. Becker discloses in Example 1 that this outer cover fabric comprises 24% pulp (hydrophilic fibers) and 76% polyester/polyethylene (hydrophobic) fibers, arranged as a pulp/conjugate fiber mixture sandwiched between two veneers of conjugate fibers and the resulting structure is stabilized by melting the polyethylene sheathed conjugate fibers to bond the hydrophobic fibers to the hydrophilic fibers. (Col. 7, lines 39-41, 45-48) Therefore, both hydrophilic and hydrophobic fibers are present at the top surface as a result of melting the top veneer fibers over the pulp fibers. Liner 10 comprises a removable backing layer in the form of release strip 24 and a liquid impermeable baffle layer 20 having a top surface and an opposite bottom surface, with the baffle layer 20 being disposed between the cover layer 18 and the backing layer 24. The absorbent liner 10 meets all of the remaining claim limitations of claim 1 and thus inherently and necessarily has a low profile. Becker teaches that the liner of “Example 1” has a maximum thickness of 5.3 mm, which overlaps the range disclosed by appellant serving as the quantitative definition of the term “low profile”. (See Specification, Page 2, lines 32-35)

With regard to the limitation “an Absorbent Capacity in the range of about 2 grams to about 10 grams”, Becker discloses identical materials for the hydrophilic microfibers (rayon) and hydrophobic fibers (polyethylene) to those disclosed by appellant for the claimed hydrophilic and hydrophobic microfibers. Absorbent capacity is a function of the absorbent materials used and

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the claimed cover layer recited in claim 1 is solely responsible for the claimed absorbent capacity inasmuch as it is the only element recited in claim 1 that is capable of absorption. If the prior art teaches the identical chemical structure, the properties appellant discloses and/or claims are necessarily present. Therefore, the absorbent liner of Becker has an absorbent capacity within the claimed range. Alternatively, it would be obvious to one of ordinary skill in the art to modify the liner of Becker so as to have an absorbent capacity within the claimed range with a reasonable expectation of success, since the materials disclosed by appellant and Becker for the cover layer responsible for absorption are identical. When the structure or composition recited in the reference is substantially identical to that of the claimed invention, claimed properties or functions are presumed to be inherent. See MPEP §2112-2112.01. A prima facie case of either anticipation or obviousness has been established when the reference discloses all of the limitations of a claim except for a property or function and the examiner cannot determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to the appellant. See *In re Fitzgerald*, 205 USPQ 594 (CCPA 1980).

With respect to **claim 4**: The top surface of the baffle layer 20 is secured to the bottom surface of the cover 18. (Col. 3, lines 24-27)

With respect to **claim 5**: The backing layer 24 is removably secured to the bottom surface of the baffle layer 20 via securement to adhesive strips 22 positioned on said baffle layer 20. (Col. 3, lines 55-57, Col. 4, 7-9)

With respect to **claim 6**: The top surface of the baffle layer is secured to the bottom surface of

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the cover 18 and the backing layer 24 is removably secured to the bottom surface of the baffle layer 20 via removable securement to adhesive strips 22. (Col. 3, lines 55-57, Col. 4, 7-9)

With respect to **claim 7**: With regard to the limitation “the Absorbent Capacity is between about 3 grams and about 9 grams”, the liner of Becker meets all of the remaining claim limitations. Absorbent capacity and Absorbent Intake rate as disclosed are functions of the absorbent materials used. When the structure or composition recited in the reference is substantially identical to that of the claimed invention, claimed properties or functions are presumed to be inherent. See MPEP §2112-2112.01. A prima facie case of either anticipation or obviousness has been established when the reference discloses all of the limitations of a claim except for a property or function and the examiner cannot determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to the appellant. See *In re Fitzgerald*, 205 USPQ 594 (CCPA 1980).

With respect to **claim 8**: With regard to the limitation “the Absorbent Capacity is between about 4 grams and about 8 grams”, the liner of Becker meets all of the remaining claim limitations. Absorbent capacity and Absorbent Intake rate as disclosed are functions of the absorbent materials used. When the structure or composition recited in the reference is substantially identical to that of the claimed invention, claimed properties or functions are presumed to be inherent. See MPEP §2112-2112.01. A prima facie case of either anticipation or obviousness has been established when the reference discloses all of the limitations of a claim except for a property or function and the examiner cannot determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to the appellant. See *In re Fitzgerald*, 205 USPQ 594 (CCPA 1980).

With respect to **claim 9**: With regard to the limitation “an Absorbent Intake Rate of less than about 20 seconds”, the liner of Becker meets all of the remaining claim limitations. Absorbent Intake rate as disclosed is a function of the absorbent materials used. When the structure or composition recited in the reference is substantially identical to that of the claimed invention, claimed properties or functions are presumed to be inherent. See MPEP §2112-2112.01. A prima facie case of either anticipation or obviousness has been established when the reference discloses all of the limitations of a claim except for a property or function and the examiner cannot determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to the appellant. See *In re Fitzgerald*, 205 USPQ 594 (CCPA 1980).

With respect to **claim 10**: With regard to the limitation “an Absorbent Intake Rate of less than about 10 seconds”, the liner of Becker meets all of the remaining claim limitations. Absorbent Intake rate as disclosed is a function of the absorbent materials used. When the structure or composition recited in the reference is substantially identical to that of the claimed invention, claimed properties or functions are presumed to be inherent. See MPEP §2112-2112.01. A prima facie case of either anticipation or obviousness has been established when the reference discloses all of the limitations of a claim except for a property or function and the examiner cannot determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to the appellant. See *In re Fitzgerald*, 205 USPQ 594 (CCPA 1980).

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With respect to **claim 14**: The liner 10 comprises a periphery. Becker does not explicitly teach at least one fold line defining a central area and two side areas, wherein the liner may be adjusted in size by folding the liner along the fold line, however the liner is considered herein to foldable along any fold line, given the flexible materials and thinness of the article. Therefore it would be obvious to one of ordinary skill in the art to modify the article of Becker such that the liner comprises at least one fold line that necessarily defines a central area and two side areas with a reasonable expectation of success. The limitation "wherein the liner may be adjusted in size" is considered functional language that bears little patentable weight, as the limitation describes what the at least one fold line does rather than what it is.

With respect to **claim 15**: An underwear attaching material in the form of adhesive strips 22 is provided on at least a portion of the bottom surface of the baffle layer 20. (Col. 3, lines 55-57)

With respect to **claim 16**: The cover layer 18 is a nonwoven integral matrix of the mixture of microfibers inasmuch as Becker teaches that the outer cover layer 18 is comprised of outer layers of heat fusible fibers with the wood pulp and bicomponent fibers sandwiched therebetween. (Col. 3, lines 13-15)

With respect to **claim 17**: As can be seen in Figs. 1 and 2, the flowers are formed as depressed areas. The microfibers at the top surface of the cover layer 18 are formed into elongated machine direction (MD) peaks (defined within petal boundaries of the petals extending parallel to the longitudinal direction of the article) and valleys (the petal boundaries substantially parallel to the longitudinal direction of the article), spaced apart from each other in the cross direction (CD).

3. Claims 11-13 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Becker ('538).

With respect to **claim 11**: The absorbent liner 10 has a density of at least about 2×0.072 g/cc, which is the density of both absorbent layers combined as one structure, which equals 0.144 g/cc, which does not fall within the claimed range of greater than about 0.2 grams per cubic centimeter. However, first, one of ordinary skill in the art can reasonably expect that adding at least the explicitly disclosed additional layers 18 and 20 will yield a liner 10 having a density within the claimed range. Second, Table 1 of Becker shows the strikethrough failure %, which is the percent of liquid applied that is not absorbed and causes rewet on the surface of the article or soils the user's undergarment. Adding an additional layer of hydrophobic fibers known as a flow retarding means as disclosed by Becker reduces the rewet and also necessarily increases the density of the article. Thus, it is interpreted herein that the amount of hydrophobic material is a result effective variable affecting the strikethrough and potential for leakage, which in turn increases the density of the article. It would be obvious to one of ordinary skill in the art to modify the article of Becker such that the article having the flow retarding means disclosed in Example 1 increases the density of the liner to within the claimed range with a reasonable expectation of success to control the rate of absorbency through the instant cover layer. Further, it has been held that the discovery of an optimum value of a result-effective variable in a known process is ordinarily within the skill of the art. See *In re Boesch and Slaney*, 205 USPQ 215 (C.C.P.A. 1980)

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With respect to **claim 12**: The absorbent liner 10 has a density of about 0.059 g/cc, which does not fall within the claimed range of greater than about 0.225 grams per cubic centimeter.

However, first, one of ordinary skill in the art can reasonably expect that adding at least the explicitly disclosed additional layers 18 and 20 will yield a liner 10 having a density within the claimed range. Second, Table 1 of Becker shows the strikethrough failure %, which is the percent of liquid applied that is not absorbed and causes rewet on the surface of the article or soils the user's undergarment. Adding an additional layer of hydrophobic fibers known as a flow retarding means as disclosed by Becker reduces the rewet and also necessarily increases the density of the article. Thus, it is interpreted herein that the amount of hydrophobic material is a result effective variable affecting the strikethrough and potential for leakage, which in turn increases the density of the article. It would be obvious to one of ordinary skill in the art to modify the article of Becker such that the article having the flow retarding means disclosed in Example 1 increases the density of the liner to within the claimed range with a reasonable expectation of success to control the rate of absorbency through the instant cover layer. Further, it has been held that the discovery of an optimum value of a result-effective variable in a known process is ordinarily within the skill of the art. See *In re Boesch and Slaney*, 205 USPQ 215 (C.C.P.A. 1980)

With respect to **claim 13**: The absorbent liner 10 has a density of about 0.059 g/cc, which does not fall within the claimed range of greater than about 0.25 grams per cubic centimeter.

However, first, one of ordinary skill in the art can reasonably expect that adding at least the explicitly disclosed additional layers 18 and 20 will yield a liner 10 having a density within the claimed range. Second, Table 1 of Becker shows the strikethrough failure %, which is the percent of liquid applied that is not absorbed and causes rewet on the surface of the article or

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soils the user's undergarment. Adding an additional layer of hydrophobic fibers known as a flow retarding means as disclosed by Becker reduces the rewet and also necessarily increases the density of the article. Thus, it is interpreted herein that the amount of hydrophobic material is a result effective variable affecting the strikethrough and potential for leakage, which in turn increases the density of the article. It would be obvious to one of ordinary skill in the art to modify the article of Becker such that the article having the flow retarding means disclosed in Example 1 increases the density of the liner to within the claimed range with a reasonable expectation of success to control the rate of absorbency through the instant cover layer. Further, it has been held that the discovery of an optimum value of a result-effective variable in a known process is ordinarily within the skill of the art. See *In re Boesch and Slaney*, 205 USPQ 215 (C.C.P.A. 1980)

With respect to **claim 22**: Becker teaches that the hydrophilic microfibers comprise 24% by weight of the fiber mixture and the hydrophobic fibers comprise the remainder, i.e. 76% by weight of the fiber mixture. Thus Becker does not anticipate the claimed ranges. However since Becker teaches that the percentages are uniform throughout the outer cover layer 18 and some areas of the cover layer 18 incur a greater volume of exudates than others, it would be obvious to one of ordinary skill in the art to modify the article of Becker such that the overall weight percentages of hydrophilic and hydrophobic fibers are maintained but vary throughout the article so as to anticipate the claimed ranges at points outside the top surface of the instant liner. It is interpreted herein that these claimed weight percentage ranges apply to everywhere in the claimed liner but the top surface of the claimed liner, as this is the only manner of claiming the weight percentages that would make the ranges consistent with claim 1 from which claim 22 depends. If there is a design need or a market pressure to solve a problem, and there are a

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finite number of identified, predictable solutions, a person of ordinary skill in art has good reason to pursue known options within his or her technical grasp, and if this leads to anticipated success, it is likely product of ordinary skill and common sense, not innovation.

4. Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Becker ('538) in view of Fell (U.S. Patent Application Publication No. 2004/0253894).

With respect to **Claim 18**: Becker does not teach a peak-to-valley depth. Fell teaches an absorbent nonwoven material containing either hydrophilic or hydrophobic material and containing a series of machine direction peaks and valleys spaced apart from each other in the cross direction. The peak-to-valley depth of the elongated MD peaks and valleys taught by Fell is 3 mm, or between about 0.1 mm and about 0.5 mm. ('894, ¶¶0203,0204) Fell teaches that the three-dimensional material in the form of bodyside liner 12 exhibits improved intake and rewet performance characteristics, therefore it would be obvious to one of ordinary skill in the art to modify the article of Becker such that the depressed areas have a peak-to-valley depth as taught by Fell to impart improved intake and rewet performance to the outer cover layer and the article.

With respect to **Claim 19**: The peak-to-valley depth of the elongated MD peaks and valleys taught by Fell is 3 mm, or between about 0.5 mm and about 3 mm. ('894, ¶¶0203,0204) The motivation to combine the teachings of Becker and Fell is stated *supra* with respect to claim 18.

With respect to **Claim 20**: Becker does not teach a peak-to-peak separation of the elongated MD peaks relative to the cross direction. The peak-to-peak separation of the elongated MD

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peaks relative to the CD in the liner material 12 taught by Fell is 2 mm, or between about 0.5 mm and about 3 mm. ('894, ¶¶0203,204) The motivation to combine the teachings of Becker and Fell is stated *supra* with respect to claim 18.

(10) Response to Argument

Appellant's arguments filed September 18, 2008 have been fully considered but they are not persuasive. With respect to arguments regarding the rejection of claims 1-3: Appellant argues that the limitation "a quantity of hydrophilic microfibers" does not include zero. To clarify examiner's position, appellant is referred to Example 1 where Becker states that "the body-facing side of the liner is provided with an outer cover constructed of a thermal bonded absorbent fabric...", the outer cover in that case being layer 18 (Col. 2, lines 45-47), cited against the claimed cover layer. Becker discloses in Example 1 that this outer cover fabric comprises 24% pulp (hydrophilic fibers) and 76% polyester/polyethylene (hydrophobic) fibers, arranged as a pulp/conjugate fiber mixture sandwiched between two veneers of conjugate fibers and the resulting structure is stabilized by melting the polyethylene sheathed conjugate fibers to bond the hydrophobic fibers to the hydrophilic fibers. (Col. 7, lines 39-41, 45-48) Therefore, both hydrophilic and hydrophobic fibers are present at the top surface as a result of melting the top veneer fibers over the pulp fibers. This also addressed appellant's argument that the claimed invention is also not obvious over Becker because Becker teaches away from the claimed mixture of hydrophilic and hydrophobic fibers. As stated *supra*, Becker explicitly teaches such a mixture at the top surface.

With respect to arguments regarding claim 22 as rejected under 35 U.S.C. 103: Examiner acknowledged that the 76%/24% ratio disclosed by Becker does not meet the claim limitations. The motivation to modify the weight percentages to meet the respective claim

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limitations is stated clearly in the rejection of claim 22. As it was and is unclear from the claims and appellant's specification precisely how the claimed hydrophilic and hydrophobic fibers are distributed in the cover layer, since claim 22 recites hydrophilic and hydrophobic fibers and depends from claim 1, it was assumed by examiner that the weight percentages recited in claim 22 were referring solely to the specific hydrophilic and hydrophobic fiber quantities of the mixture at the surface of the cover layer recited in claim 1.

With respect to arguments regarding the rejection of claims 18-20: Appellant argues that Fell does not disclose whether the bodyside liner having peaks and valleys is made from hydrophilic and/or hydrophobic fibers. This is immaterial as Becker already meets this limitation as well as suggesting peaks and valleys by disclosing embossed patterns. The rejection clearly states that there is motivation to modify the article of Becker (already having the required mix of hydrophilic and hydrophobic fibers) such that the pattern includes peak-to-valley depths and peak-to-peak separations as disclosed by Fell that meet the claim limitations. As to appellant's argument that Fell discloses creating peaks and valleys in an absorbent layer, not an outer cover, again, Becker already meets this limitation and the benefit of such peaks and valleys would be the same in an outer cover that can take on and/or direct liquid as in an absorbent core, which also takes on liquid or exudate.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

/Melanie J Hand/

Examiner, Art Unit 3761

Conferees:

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761

/Jacqueline F Stephens/

Primary Examiner, Art Unit 3761